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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JONAS VITAL SILVERIO,

Defendant and Appellant.

B231526

(Los Angeles County
Super. Ct. No. TA107357)

APPEAL from a judgment of the Superior Court of Los Angeles County, John J. Cheroske, Judge. Affirmed.

Jonas Vital Silverio, in pro. per.; and David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jonas Vital Silverio worked as a teacher, girls' volleyball coach and administrator for middle and high schools in Los Angeles. An information filed on November 3, 2009 charged Silverio with committing 17 separate acts of lewd conduct upon three volleyball players, G.B., S.R. and M.S. The unlawful acts were allegedly committed between September 1, 2005 and June 30, 2007 (G.B., counts 1-4), September 2, 2005 and June 30, 2006 (S.R., counts 5-14), September 1, 2000 and March 1, 2001 (M.S., counts 15-17), when the three girls were each 14 or 15 years old and Silverio was at least 10 years older than his victims. (Pen. Code, § 288, subd. (c)(1).)¹ The information also charged Silverio with committing continuous sexual abuse of C.C, a female student in his sixth grade class, from January 2, 1996 to December 31, 1996. (§§ 288.5, subd. (a) 1203.066, subd. (a)(7).) The information specially alleged Silverio committed the offenses on more than one victim. Silverio entered a plea of not guilty and denied the special allegation.

On February 10, 2010 Silverio entered a conditional plea to three counts of lewd acts upon a child and an amended count of forcible lewd acts upon a child (§ 288, subd. (a)), each count involving a different victim. As part of the conditional plea, Silverio agreed to submit to a section 288.1 evaluation.² If the evaluation indicated Silverio was amenable to probation, he would be sentenced to a suspended aggregate state prison term of eight years and placed on five years of formal probation. If Silverio was found not to be amenable to probation, he would then be permitted to withdraw his plea.

At the April 29, 2010 sentencing hearing, the prosecutor withdrew her conditional offer after reviewing the section 288.1 evaluation. Silverio was allowed to withdraw his plea, and the matter was set for trial.

¹ Statutory references are to the Penal Code.

² Section 288.1 requires as a condition of probation a psychological evaluation of a defendant convicted of a lewd or lascivious act on a child under age 14.

On June 8, 2010 the prosecutor amended the information to charge Silverio with two additional counts of lewd acts upon a child of 14 or 15 years (§ 288, subd. (c)(1)). Silverio thereafter waived his right to trial and entered a plea of no contest to 10 counts of lewd acts upon a child of 14 or 15 years (counts 1, 2, 3, 5, 6, 7, 15, 16, and amended counts 19, 20). As part of the negotiated agreement Silverio was subject to a maximum state prison term of eight years, depending on the results of a section 1202.03 diagnostic study.

At the time Silverio entered his plea, he was advised of his constitutional rights and the nature and consequences of his plea. Silverio stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and admission and accepted the terms of the negotiated agreement.

The trial court found the plea was freely and voluntarily entered and there was a factual basis for the plea. Defense counsel joined in the waivers of Silverio's constitutional rights and stipulated to a factual basis for the plea. The matter was continued for sentencing.

According to the diagnostic study report filed on December 7, 2010, Silverio was not amenable to probation.

At the sentencing hearing on February 18, 2011 the trial court stated it had reviewed and considered the diagnostic study report and the parties' sentencing memoranda. Following statements by the victims and their relatives and argument by counsel, the court sentenced Silverio to an aggregate state prison term of eight years, consisting of the two-year middle term for lewd acts upon a child of 14 or 15 years on count 1, and consecutive terms of eight months (one-third the middle term) on counts 2, 3, 5, 6, 7, 15, 16, 19 and 20. The remaining counts were dismissed on the People's motion.

The trial court awarded Silverio 886 days of presentence custody credit (591 actual days and 295 days of conduct credits). The court ordered him to pay a \$40 security assessment and a \$30 criminal conviction assessment as to each count, a

\$20 DNA penalty assessment and a \$1,600 restitution fine. The court imposed and suspended a parole revocation fine pursuant to section 1202.45.

On March 10, 2011 Silverio filed a notice of appeal in propria persona, which was not accompanied by a certificate of probable cause and failed to state the appeal was based on a denial of a motion to suppress evidence under section 1538.5 or grounds arising after the plea and not affecting the plea's validity.

We appointed counsel to represent Silverio on appeal. By letter dated June 13, 2011 this court asked Silverio's counsel to address the question why the notice of appeal should not be marked "inoperative" and the appeal dismissed (Cal. Rules of Court, rule 8.304(b)). In response counsel stated the issue to be raised on appeal concerned the trial court's denial of probation and choice of sentence and requested the notice of appeal be construed to include the following language: "This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea." We granted counsel's request and reinstated the notice of appeal.

After examination of the record Silverio's counsel filed an opening brief in which no issues were raised. On November 29, 2011 we advised Silverio he had 30 days within which to personally submit any contentions or issues he wished us to consider. Silverio submitted a typed supplemental brief, filed December 28, 2011, in which he asserted some of the counts to which he pleaded were barred by the statute of limitations, his sentence constituted cruel and unusual punishment, he did not enter a plea to four of the counts on which he was sentenced, his due process rights were violated, his trial counsel rendered ineffective assistance and his presentence credits were miscalculated.

We have examined the entire record and are satisfied Silverio's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

Because Silverio is, in essence, attacking the validity of his plea without a certificate of probable cause, his notice of appeal is inoperative to that extent. (§ 1237.5;

see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) In any event, the record provides no support for Silverio's assertions his prosecution was time-barred (§§ 801, 803), his sentence was not in accordance with his plea, his trial counsel provided ineffective assistance (see *Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674]), his presentence custody credits were miscalculated or there were any errors based on his sentence or other matters not affecting his plea.

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.